

OFFICIAL FILE
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS
RCF COMMISSION

CHIEF CLERK'S OFFICE
et No. 04-0583

Complaint requesting ICC to order Illinois Power Company to cease and desist from promoting and marketing retail electric products in violation of 83 Ill. Adm. Code 452.240.

CHIEF CLERK'S OFFICE
Docket No. 04-0583

VERIFIED COMPLAINT OF BLUESTAR ENERGY SERVICES, INC.

BlueStar Energy Services, Inc. ("BlueStar"), pursuant to 83 Illinois Administrative Code Sections 200.170 and 452.310, files this Complaint requesting that the Illinois Commerce Commission (the "Commission") order Illinois Power Company to cease and desist all efforts to promote and market retail electric supply services, and to cease and desist its affirmative efforts to obtain and retain customers for retail electric supply services offered by IP as an Integrated Distribution Company. In support of this Complaint, BlueStar states as follows:

Facts

1. Illinois Power Company (“IP”) is an Integrated Distribution Company (“IDC”), pursuant to 220 ILCS 5/16-105, with a service territory located in and around Decatur, Illinois.
2. BlueStar offers billing and related energy services (but not direct supply) in the IP service territory. BlueStar provides billing agent services to customers in the IP service territory.
3. IP, as an IDC, is required to offer its qualifying customers the option to take retail service pursuant to 220 ILCS 5/16-110 (the power purchase option or “PPO”). The Commission has issued administrative rules that prohibit an IDC (like IP) from promoting, advertising, or

marketing the PPO, save for certain limited circumstances not applicable here. 83 Ill. Adm. Code 452.240. As the Commission previously noted, “the marketing of retail electric supply services, including . . . the PPO, are strictly prohibited.” *See* Order of the Commission dated February 15, 2001, Docket No. 98-0147 (Cons.) 98-0148 (2001 Ill. PUC 167, *65-66).

IP’s Promotion of Retail Energy Products

4. BlueStar has been informed by one of its potential customers in the IP service territory, Black Lab Custom Products (a/k/a Fairmount Custom Products, and hereinafter referred to as “Custom Products”), that IP has taken affirmative steps to obtain Custom Products as a retail electric supply customer. As part of the affirmative marketing efforts of its retail electric supply products, IP prepared and delivered a PPO savings estimate for Custom Products. (A copy is attached as Exhibit A).

5. Upon information and belief, one or more IP employees, including Debbie Fuhrman, spoke directly with Custom Product’s representative regarding IP’s proposal for switching Custom Products to one of IP’s retail electric products, extolling the benefits of taking retail supply from IP.

6. On August 26, 2004, the general counsel for BlueStar contacted an IP attorney regarding BlueStar’s concerns about the legality of IP’s marketing efforts. Through counsel, IP affirmed that it was aware of its employees’ practices and condoned them, and that IP would condone these practices in the future.

Commission Jurisdiction

7. IP is an Illinois public utility. 220 ILCS 5/3-105. As such, the Commission has plenary jurisdiction and general supervisory power over IP. *See* 220 ILCS 5/4-101.

8. BlueStar has standing to file this Complaint. 220 ILCS 5/10-108.

Discussion

9. The Commission has made clear the fact that a utility such as IP can avoid the expense of functional separation only by agreeing to exit the retail energy market. *See* Order of the Commission dated October 24, 2001, Docket No. 98-0147 (Cons.) 98-0148 (2001 Ill. PUC 959, *6). Any attempt by IP to reinsert itself back into the retail energy market ignores IP's obligations under the IDC structure. *Id.*

10. IP's actions with respect to Custom Products, as documented above, constituted affirmative acts "to retain or obtain a customer for [a] retail electric supply service," in contradiction of §452.240. Specifically, rather than referring Customer Products to IP's website to utilize the PPO calculator on its own, IP took the affirmative step of preparing and disseminating a PPO savings estimate for Custom Products. This constituted a promotion of the PPO in order to convince Custom Products to sign up with IP. This behavior by IP is prohibited by §452.240, as it both promotes the PPO (in violation of §452.240(a)) and is an affirmative act intended to obtain or retain a customer for a retail electric service (in violation of §452.240(e)).

11. IP's failure to adhere to the strict and clear guidelines for an IDC that were established by the Commission is an impediment to the growth of a competitive market in Illinois, and takes unfair advantage of IP's historical role as a full-service electric utility.

Conclusion

WHEREFORE, Plaintiff BlueStar requests that the Commission take the following action:

(a) Order IP to cease and desist immediately from further promoting and marketing of its retail electric products, including the PPO, pending resolution of this Complaint;

(b) Order IP to file its Answer to the complaint within 21 days of receipt, per 83 Ill. Adm. Code 200.180;

(c) Order IP to cease and desist from all affirmative actions to obtain or retain customers for its retail electric products;

(d) Order IP to cease and desist from the inequitable sharing of information between its distribution and retail functions;

(e) Require IP to identify all customers to whom it marketed its retail electric products and to notify those customers that it did so in violation of the Illinois Administrative Code, and to allow those customers to terminate their contracts with IP without penalty and with 60 days to enter into a retail service contract;

(f) Penalize IP \$250 for each customer to whom it so marketed its retail electric products;

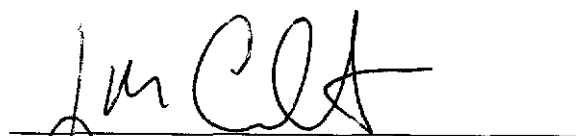
(g) Require IP to show a program of compliance with respect to employee training in awareness of promotional and marketing efforts prohibited by the Commission;

(h) Find a violation of Subpart B, pursuant to 83 Ill. Adm. Code 452.320; and

(i) Enter a finding that IP actions constitute a violation of 83 Ill. Adm. Code 452.240.

Respectfully submitted,

BLUESTAR ENERGY SERVICES, INC.

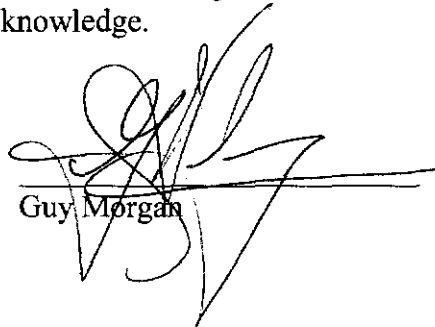


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VERIFICATION

I, Guy Morgan, hereby affirm that I have knowledge of the contents of this Complaint and it is true and accurate to the best of my knowledge.


Guy Morgan

SUBSCRIBED AND SWORN TO
before me this 14th day
of September, 2004.


NOTARY PUBLIC

